IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

WASEEM DAKER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Case No. 5:19-cv-00365-MTT-CHW**
	:	
Commissioner TIMOTHY WARD, *et al.*,	:	**Proceedings Under 42 U.S.C. § 1983**
	:	**Before the U.S. Magistrate Judge**
Defendants.	:	
	:	

REPORT AND RECOMMENDATION[1]

For the reasons discussed below, it is **RECOMMENDED** that this action be **DISMISSED without prejudice**.

(a) Background

Waseem Daker, an prisoner–litigant with a lengthy history of abusive filings,[2] seeks in this Section 1983 action to raise a host of different claims. Several of those claims involve disparate concerns relating to federal subject matter jurisdiction. For example, Daker argues that correctional policy governing prison grievances, by virtue of a two-grievance limit, is "designed to prevent prisoners from … develop[ing] evidence or an administrative record that will support court claims challenging prisoners' conditions of confinement. (Doc. 9, p. 75). This claim appears to advance a theory of denial of court access, but Daker cites no corresponding "actual injury." *See Lewis v. Casey*, 518 U.S. 343, 349 (1996) ("actual injury derives ultimately from the doctrine of standing").

Similarly, Daker describes many alleged violations of Georgia's Open Records Act, *see* (Doc. 9, pp. 14–68) but cites no basis for advancing his state ORA claims in federal court.

[1] Daker's motion to expedite (Doc. 10) is **DENIED**.

[2] *See, e.g.*, *Daker v. Comm'r, Ga. Dep't of Corrs.*, 820 F.3d 1278, 1281 (11th Cir. 2016) ("Daker has submitted over a thousand *pro se* filings in over a hundred actions and appeals in at least nine different federal courts").

Similarly, Daker argues that prison officials have wrongfully refused to turn over his confiscated "cell-phone-related paraphernalia" to designated visitors or mail recipients. Daker gives only a conclusory indication that this refusal is dictated by an "established state procedure," and Georgia law provides a cause of action for wrongful conversion of personal property. *See Moore v. McLaughlin*, 569 F. App'x 656, 658 (11th Cir. 2014). Hence, it is not clear that Daker's allegations support a due process claim. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984) ("an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause … if a meaningful postdeprivation remedy for the loss is available").

These claims constitute only some of the claims that Daker seeks to raise in this Section 1983 action. Other claims include: a claim of systematic retaliation based upon prisoners' resort to the prison grievance process, claims of denial of court access based on inadequate research opportunity or available legal materials, and a claim of denial of court access based upon the lack of a photocopy machine.

In a prior order, the Court explained the rules of joinder set by the Federal Rules of Civil Procedure, and the Court informed Daker that his pleading, in its current form, violated these rules. *See* (Doc. 6, pp. 7–11). The Court further instructed Daker to file a pleading that complied with the Federal Rules' joinder provisions. (Doc. 6, p. 11) ("it is not incumbent upon the Court to effectively re-write Plaintiff's Complaint so that it complies with the Federal Rules of Civil Procedure"). The Court also warned Daker that his "Failure to fully and timely comply with this Order may result in the dismissal of Plaintiff's Complaint." (Doc. 6, p. 12). In response, Daker refiled a materially identical, 105-page complaint. The new complaint responds to the Court's improper joinder concerns with only a single, conclusory remark:

> 23. All claims are properly joined against the GDC Central Office Defendants, and GSP Defendants former Warden Robert Toole, his successor Stanley Williams, and his successor Marty Allen, under Fed. R. Civ. P. 18(a), because they pertain to policies and customs adopted or maintained by GDC Central Office Defendants.
>
> (Doc. 9, p. 11)

(b) Dismissal

For three reasons, it is recommended that this action be dismissed without prejudice. First, although Daker is proceeding *pro se*, he is "nevertheless … required … to conform to procedural rules," such as the rules of joinder set by the Federal Rules of Civil Procedure. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007). Daker's refusal to follow these rules likely flows from his prior accrual of "three strikes" under 28 U.S.C. § 1915(g). Because federal courts have determined that Daker has, on at least three prior occasions, commenced an action that was later dismissed as frivolous, malicious, or for failure to state a claim, Daker is no longer allowed to proceed *in forma pauperis* without a showing of imminent danger of serious physical injury. By violating the joinder rules, Daker reduces his filing fees. Hence, by violating the joinder rules, Daker frustrates the PLRA's purpose of "curtail[ing] abusive prisoner tort, civil rights and conditions of confinement litigation." *Hubbard v. Haley*, 262 F.3d 1194, 1197 (11th Cir. 2001) (citing the "Act's requirement that each prisoner pay the full filing fee"). For this reason, the joinder rules should be fastidiously enforced.

Second, Daker's litigation history reveals a pattern of abuse. In a recent unpublished case, the Eleventh Circuit Court of Appeals upheld a ruling that Daker's practice of repeatedly filing "virtually identical causes of action" amounted to malicious behavior subject to a dismissal under 28 U.S.C. §1915(e)(2)(B). *Daker v. Comm'r*, — F. App'x —, 2020 WL 7396561 at *4 (11th Cir. Dec. 17, 2020). In that same order, the Eleventh Circuit upheld the imposition of a page limitation

constraining Daker's complaint to an eleven-page form and to ten additional pages. *Id.* at *6. Again, Daker's amended complaint in this action runs over 100 pages long. (Doc. 9). As reiterated by the Eleventh Circuit, district courts have "considerable discretion in deciding how to impose restrictions on serial litigants." *Daker*, 2020 WL 7396561 at *6 (internal quotations omitted).

Third, in this case, the Court exercised its discretion by issuing instructions to Daker — that is, the Court explained the joinder rules, instructed Daker to make some effort to comply with those rules, and warned Daker that a dismissal could follow if he failed to comply. Daker has failed to make any effort meaningfully to comply with the Court's instructions. Daker's disregard for this Court's instructions, on its own, gives an independent ground for a dismissal. *See Brown v. Tallahassee Police Dep't*, 205 F. App'x 802, 802 (11th Cir. 2006) ("The court may dismiss an action *sua sponte* under Rule 41(b) for … failure to obey a court order").

In summary, because Daker is attempting to frustrate the PLRA's purpose of curtailing abusive litigation, because Daker has a demonstrated history of abusing the judicial process, and because Daker failed to follow this Court's clear instructions, it is **RECOMMENDED** that this action be **DISMISSED without prejudice**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge will make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to

challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 5th day of January, 2021.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge